

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CRAIG CUNNINGHAM,

Plaintiff,

v.

MICHAEL MONTES, Tollfreezone.com, Inc.,
Mydataguys.com, LLC, Podmusicgear.com, Inc.,
Tollfreezone.com, Inc., dba Docauditor.com,
Tollfreezone.com, Inc., dba Mobile Trackme,
Emailmyvmail.Com, Inc., and John and Jane Does 1-10,

Case No. 16-cv-761

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF ALL
DEFENDANTS EXCEPT JOHN AND JANE DOES 1-10**

NOW COME all Defendants, except John and Jane Does 1-10, by and through their attorneys, Axley Brynelson, LLP, by Kevin D. Trost, and for their answer to the allegations of the Complaint, state as follows:

1. Defendants lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

2. In answer to paragraph 2 of the Complaint, Defendants admit only that Tollfreezone.com, Inc. is a registered corporation in the State of California and Michael Montes is identified with that state as the company contact. Defendants deny the remainder of the allegations contained in paragraph 2 of the Complaint.

3. In answer to paragraph 3 of the Complaint, Defendants admit only that Podmusicgear.com, Inc. is a Delaware corporation, and Michael Montes is identified with that state

as the company contact. Defendants deny the remainder of the allegations contained in paragraph 3 of the Complaint.

4. In answer to paragraph 4 of the Complaint, Defendants admit only that mydataguys.com, LLC, is a Nevada limited liability company, and Michael Montes is identified with that state as the company contact. Defendants deny the remainder of the allegations contained in paragraph 4 of the Complaint.

5. In answer to paragraph 5 of the Complaint, Defendants admit only that emailmyvmail.com, Inc. is a Nevada corporation, and Michael Montes is identified with that state as the company contact. Defendants deny the remainder of the allegations contained in paragraph 5 of the Complaint.

6. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

JURISDICTION

7. Defendants deny the allegations contained in paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in paragraph 9 of the Complaint.

FACTUAL ALLEGATIONS

10. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

11. Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

12. Defendants deny the allegations contained in paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint contains legal conclusions to which no response is required. To the extent paragraph 13 contains any factual allegations, Defendants lack information sufficient to form a belief as to the truth of those allegations, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

14. Defendants deny the allegations contained in paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint contains legal conclusions to which no response is required. To the extent paragraph 15 contains any factual allegations, Defendants lack information sufficient to form a belief as to the truth of those allegations, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

16. Paragraph 16 of the Complaint contains legal conclusions to which no response is required. To the extent paragraph 16 contains any factual allegations, Defendants lack information sufficient to form a belief as to the truth of those allegations, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

17. Paragraph 17 of the Complaint contains legal conclusions to which no response is required. To the extent paragraph 17 contains any factual allegations, Defendants lack information sufficient to form a belief as to the truth of those allegations, and, therefore, deny said allegations leaving Plaintiff to his proof thereon.

ACTUAL DAMAGES

18. Defendants deny the allegations contained in paragraph 18 of the Complaint.

CORPORATE OFFICER LIABILITY

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Paragraph 21 of the Complaint contains legal conclusions to which no response is required. To the extent paragraph 21 contains any factual allegations, Defendants deny said allegations.

22. Defendants deny the allegations contained in paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint.

**CAUSE OF ACTION – COUNT I –
VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT**

25. Defendants reallege as if incorporated herein by reference each of their answers to paragraphs 1-24 above as if fully set forth herein.

26. Defendants deny the allegations contained in paragraph 26 of the Complaint.

**CAUSE OF ACTION – COUNT II -
VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT**

27. Defendants reallege as if incorporated herein by reference each of their answers to paragraphs 1-26 above as if fully set forth herein.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint.

29. Defendants deny any allegation contained in the Complaint which is not explicitly admitted herein.

WHEREFORE, Defendants demands judgment dismissing Plaintiff's Complaint and awarding Defendants their statutory costs, attorney's fees and other such relief as the court may deem just and equitable.

AFFIRMATIVE DEFENSES

Defendants further answering Plaintiff's Complaint by way of affirmative defenses applicable to all claims for relief herein, allege as follows:

1. Plaintiff lacks personal jurisdiction over the Defendants.
2. The present lawsuit is improperly venued in the United States District Court for the Western District of Wisconsin.
3. Plaintiff's Complaint fails to state a claim upon which relief may be granted against these Defendants.
4. Some or all of Plaintiff's claims are subject to the statute of limitations.
5. Plaintiff's Complaint is subject to dismissal under provisions of the Communications Decency Act.
6. Plaintiff's damages, if any, were caused by the actions of a third party or parties over whom these Defendants had no control or right to control.
7. Plaintiff may have failed to mitigate some or all of his claimed damages as required by law.
8. Any statutory violation by any of the Defendants, if any such violation is proved, was not intentional and resulted, if at all, from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.
9. Plaintiff's claims against some or all of the Defendants are frivolous and without a basis in fact or law.

WHEREFORE, Defendants respectfully request the court dismiss the Complaint on its merits, with prejudice, and enter judgment in favor of these Defendants for statutory costs and other such relief as the court may deem just and equitable.

Dated this 1st day of June, 2017.

AXLEY BRYNELSON, LLP

s/ Kevin D. Trost

Kevin D. Trost, State Bar No. 1028231

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